

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:98-cr-081

Also Case No. 3:12-cv-183

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

KEITH DEWITT, SR.,

Defendant.

:

DECISION AND ORDER

This case is before the Court on Petitioner's Request that the due date for his objections to the pending Report and Recommendations be changed to February 13, 2019, a result he asserts is commanded by Fed.R.Civ.P. 73(b) (ECF No. 527).

The docket reflects that the relevant Report was filed January 23, 2019, and sent to the Defendant by regular mail that day (ECF No. 526). The Report concludes with the standard notice to *pro se* litigants that objections are due fourteen days after service with three days added because service is being made by mail. *Id.* at PageID 2620. Seventeen days after January 23, 2019, is February 9, 2019. Because that is a Saturday, Defendant's time to file objections is automatically extended to the next day that is not a Saturday, Sunday, or legal holiday. Fed.R.Civ.P. 6(a)(1)(C). That date is Monday, February 11, 2019, which is the correct due date.

Defendant posits that February 13, 2019, is the correct due date because it is fourteen days after he received the Report on January 30, 2019. However, service of a report and recommendations is complete upon mailing, and not upon receipt. Fed.R.Civ.P. 5(b)(2)(C). Because Defendant is incarcerated, he can effectively file his objections by depositing them in the prison mail system by the due date. *Houston v. Lack*, 487 U.S. 266 (1988); *Cook v. Stegall*, 295 F.3d 517, 521 (6th Cir. 2002).

To avoid any perceived unfairness, the Magistrate Judge *sua sponte* extends Defendant's time to object to February 13, 2019.

February 5, 2019.

s/ ***Michael R. Merz***
United States Magistrate Judge